

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Billy D. Morrison a/k/a Billy Devar)
Morrison, Jr.,)

Plaintiff,)

vs.)

S.C.D.C., Dr. J. McCree, Dr. J. Pate,)
Lee Infirmary, Nurse D. Capadonia,)
Nurse S. Blackwell, and Julie Powell,)
nursing supervisor,)

Defendants.)

Civil Action No. 4:19-cv-2171-TMC

ORDER

Plaintiff Billy D. Morrison, a state prisoner proceeding *pro se* and *in forma pauperis*, filed this action pursuant to 42 U.S.C. § 1983. (ECF Nos. 2, 44). This action was originally docketed as Case Number 4:19-cv-2053-TMC-TER; however, on August 2, 2019, the court severed the instant matter, which was re-docketed under the case number captioned above. (ECF No. 1). In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02(B)(2)(e) (D.S.C.), this matter was referred to a magistrate judge for all pretrial proceedings. On June 1, 2020, the magistrate judge entered an order authorizing service of process on all Defendants. (ECF No. 49). On August 17, 2020, the summons as to Defendant Lee Infirmary was returned unexecuted, noting that Lee Infirmary is “not a proper entity.” (ECF No. 59). Now before the court is the magistrate judge’s Report and Recommendation (“Report”), recommending that the court dismiss Defendant Lee Infirmary with prejudice. (ECF No. 72). The Report was mailed to Plaintiff at the address he provided the court, (ECF No. 73), and has not been returned as undeliverable. Therefore, Plaintiff is presumed to have received the Report. Plaintiff was advised of his right to file specific objections to the Report, (ECF No. 72 at 4), but failed to do so. However, the court notes that on

September 30, 2020, Plaintiff filed a letter with the court providing corrected service addresses for Defendants McCree and Pate and, in his attachment, Plaintiff “accept[ed] the [magistrate judge’s] findings” and requested that Lee Infirmary be removed as a defendant. (ECF Nos. 76, 76-1). Accordingly, court construes this letter as notice that Plaintiff does not object to the Report and as a voluntary dismissal of Defendant Lee Infirmary. This matter is ripe for review.

The magistrate judge’s recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). Nevertheless, “[t]he district court is only required to review *de novo* those portions of the report to which specific objections have been made, and need not conduct *de novo* review ‘when a party makes general and conclusory objections that do not direct the court to a specific error in the magistrate judge’s proposed findings and recommendations.’” *Farmer v. McBride*, 177 Fed. App’x 327, 330–31 (4th Cir. April 26, 2006) (quoting *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982)). The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1). However, “[i]n the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation.” *White v. Stacher*, C/A No. 6-05-1737-GRA-WMC, 2005 WL 8163324, at *1 (D.S.C. Aug. 29, 2005) (citing *Camby v. Davis*, 718 F.2d 198, 199–200 (4th Cir. 1983)).

Thus, having reviewed the Report and without objection from Plaintiff, the court agrees with and adopts, the magistrate judge’s findings in the Report (ECF No. 72), which are incorporated herein by reference. As to the magistrate judge’s recommendation that Defendant Lee Infirmary be dismissed with prejudice, the court finds that because Plaintiff has voluntarily dismissed Defendant Lee Infirmary, (ECF No. 76-1), dismissal without prejudice is appropriate.

Therefore, the court adopts the recommendation in the Report as modified and Defendant Lee Infirmary is hereby **DISMISSED** without prejudice.

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

Anderson, South Carolina
October 5, 2020

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.